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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 43 of 1983

With

WEALTH TAX REFERENCE NO. 58 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF WEALTH-TAX

Versus

DHANSUKHLAL J GAJJAR

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Appearance:

WTR 43/83 MR MANISH R BHATT for Petitioner V/s.

Respondent served

WTR 58/83 MR MANISH R BHATT for applicant

MR N.R.DIVETIA for respondent

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

Date of decision: 08/05/98

ORAL JUDGEMENT (Per R.K.Abichandani, J)

Both the matters raise similar questions and have

been argued together, for a common disposal.

2. In WTR 43 of 1983, the Income Tax Appellate Tribunal, Ahmedabad has referred the following questions for the opinion of this court under Section 27(1) of the Wealth Tax Act, 1957.

1. "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessment was not completed within the statutory time laid down u/s. 17-A of the Wealth Tax Act, 1957 notwithstanding the fact that the assessment order was made on 28th March 1979 and the tax computation sheets (Assessments/Refund Forms ITNS 150) were made on 30th March 1979?"

2. "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the provisions of Rule IBB of the Wealth-tax Rule which came into force from 1st April, 1979 were applicable to the assessment of the assessee to wealth tax for the assessment year?"

3. In Wealth Tax Reference No.58 of 1983, the Tribunal has referred the following questions under Section 27(1) of the said Act"

1. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessment was not completed within the statutory time limit prescribed under Section 17-A of the Wealth-tax Act, 1957, notwithstanding the fact that the assessment order was made on 28th March, 1979 and tax computation sheets (Assessment/Refund forms ITNS) 150 were made on 30th March, 1979?"

4. "Whether, on the facts in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the provisions of Rule IBB of the wealth-tax Rules which came into force from 1st April, 1979 were applicable to the assessments of the assessee to wealth-tax assessment year?"

5. "Whether, on the facts and circumstances of the case the Tribunal was right in law in coming to the conclusion that the provisions of Section 42 C were not applicable in the present case?"

4. W.T.R. 43 of 1983 pertains to the assessment years 1968-69 to 1973-74, while W.T.R.58 of 1983 relates to the assessment year 1974-75. The Wealth Tax Officer had passed orders on 20.3.78 for all assessment years from 1967-68 to 1973-74 as also for assessment year 1974-75. Demand Notice were issued on 17.4.1979. The computation sheets were prepared on 30.3.79 but it was found that they did not bear the signature of the Wealth Tax Officer. The WTO had also made reference to the Valuation Cell under Section 16A of the Act in respect of the immovable properties including lands which were claimed by the assessee to be agricultural. The Assistant Appellate Commissioner held that the assessments made by the WTO were not time barred. It was further held that the reference made by the WTO under Section 16(A) was not valid in respect of the agricultural lands and a direction was given to the WTO to accept the values of immovable properties as returned with by the assessee.

5. The Tribunal on appeal by the Revenue on the findings of the AAC that the reference under Section 16A made by the WTO to the Valuation Cell was not valid and on cross-objections of the assessee that the assessments were not made within time held that there was no determination of tax payable as shown in the forms on 30.3.1979 and hence the limit for making the assessments expired on 31.3.1979 and further that as determination of the wealth tax payable took place on 17.4.1979 when the demand notice was signed by the WTO the assessment had not been completed within the statutory time led down under Section 17A of the said Act. The Tribunal also held that the provisions of IBB of the Wealth Tax Rules were applicable to the assessee because the assessments were pending. The Tribunal in view of its findings that the assessments were not made within the time limit prescribed did not decide the matter on merits. It was held by the Tribunal that the provisions of Section 42 C were not applicable. The Tribunal did not decide the question whether the reference made by the Valuation Cell under Section 16A of the Wealth Tax was valid in view of its decision on other aspects of the matter in respect of which the aforesaid questions have been referred.

6. It was contended on behalf of the Revenue that the assessment order was signed by the WTO on 30.3.98 before the expiry of the period of limitation i.e. 31.3.79 and that the computation sheet was also worked out on 30.3.77 which should be taken as a part of the assessment order even if it is not separately signed or

initialled.

7. Mr.Divetia, the learned Counsel appearing for the assessee on the other hand contended that not only the assessment order was required to be signed by the WTO even the determination of tax was equally required to be signed. He submitted that the process of assessment included the process of determination of tax.

8. The provisions relating to assessment of wealth are contained in Chapter IV of the said Act. In cases of regular assessment of wealth made under Section 16(3) of the Act, the Assessing Officer after taking into account all the relevant material which he may have gathered has to make an order in writing, for assessing the net wealth of the assessee and to determine the sum payable on the basis of such assessment. When the Assessing Officer is duty bound to make a order in writing for assessing the net wealth as well as determining the sum payable by the assessee on the basis of such assessment, it would incumbent upon the assessing officer to make an order in writing on both the aspects i.e. assessment of the net wealth of the assessee as well as determination of the sum payable by him on the basis of such assessment. An order made under a statutory provision by an authority empowered to make it in writing must necessarily bear the signature of such authority to authenticate that the order was in fact made by the concerned authority. It cannot be urged that the authority concerned was only required to make an order whether signed or not. It would be impossible to prove, should any dispute arise, that the order was actually made by the concerned authority, unless it bears the signature of the authority who is required to make the order in writing, by a statutory provision. The word 'signature' is wide enough to include the initials of a person. Therefore, even if initials are put by the concerned officer that would be sufficient to indicate that the order was in fact made by the concerned authority. In context of the provisions of Section 16(3) of the said Act, it would be incumbent upon the concerned assessing officer to put his signature indicating that he had by that order assessed the wealth and also determined the sum payable. It will not be sufficient compliance of the said provisions if he only puts his signature on the assessment of wealth and does not so authenticate by signature the determination of the sum payable. The words sum payable are of wider amplitude than the words tax payable. Therefore, there is greater reason for the assessing officer to work out the sum payable pursuant to the assessment of wealth made by him.

9. Now, coming to the facts of this case, we may take note of the findings of fact arrived at by the Tribunal in its own words i.e. :-

"We inspected the assessment records and found that tax computation sheets which are described as "Assessment/Refund Forms" were ITNS 150 and these form of all the six assessment years bore the date 30th March 1979 (the A.A.C was obviously wrong in saying that these had been prepared on 28.3.1979 either he did not see these sheets or missed the date on them) but it was found also that these sheets did not bear the signature of the W.T.O. Shri N.K.Jain and the signatures column was blank and only the name column showed his name written there. The name column, therefore, in each of the six sheets merely indicated the name of the Wealth-tax officer, but he had not signed those forms in the appropriate signatures column. It may also be clarified that the writing in the name column of the name, Shri N.K.Jain was by some staff member and it was not the signature of Shri N.K.Jain."

10. Similar finding is arrived at by the Tribunal in WTR 58 of 1983 in para 3 of its order in which it has been stated that last assessment/relevant form (computation sheet) was not signed by the WTO Shri N.K.Jain and the signature column was blank.

11. We cannot go behind the finding of fact that the Tribunal on verification of the record found that the computation sheet/Assessment/Refund forms were not signed by the Assessing Officer. It is therefore established that since the determination of the sum payable was not made before the expiry of the limitation period i.e. 31.3.1979 the WTO did not complete the assessment within the stipulated period of limitation.

12. The aforesaid conclusion is fully supported by the decision of the Hon'ble Supreme Court in Kalyankumar Ray V. C.I.T. reported in 191 I.T.R. Page.634 in which the Supreme Court held in context of a similar provision of Section 143(3) of the Income Tax Act, 1961 that assessment was an integrated process involving not only the assessment of the total income but also the determination of the tax. It was held that the latter was as crucial as the former. It was observed that all that was needed was that there must be some writing initialled or signed by the Income Tax Officer before the

period of limitation prescribed for completion of the assessment has expired, in which the tax payable is determined. The Supreme Court in fact observed that to avoid unnecessary controversies like this, the Department should, in future, adopt the salutary and useful practice of incorporating the entire tax calculations in I.T.N.S.No.65 form itself or, in the alternative, make the I.T.N.S.150 an annexure to form part of the assessment order, have it signed by the Income-tax Officer and have it served on the assessee alongwith I.T.N.S.65. Same view was reiterated by the Hon'ble Supreme Court in Smt.Kilasho Devi Burman and Others Vs. C.I.T. reported in 219 I.T.R. Page.214 where upon the record produced by the Revenue before the Tribunal it was found that there was no signed assessment order nor a signed assessment form, it was held that there was no valid assessment. Even this Court in Purshottamdas Patel V. C.I.T. reported in 209 ITR 52 applying the ratio of Kalyankumar Ray's case (Supra) held that the words "order of assessment" cannot be construed to be assessment of total income only and that there should be an order in writing whereby the total income of the assessee is assessed and the tax payable by him is determined. It is only when an order in writing in respect of both these things is passed that it can be said that there is a complete order of assessment. These two steps may be taken simultaneously or separately but both of them will have to be taken within the time prescribed by the Act. It applied the dictum of the Supreme Court in Kalyankumar's case that the assessment is one integrated process involving not only the assessment of the total income, but also the determination of the tax. In view of this settled legal position, we hold that the Tribunal was right in coming to the conclusion that the assessment was not completed within the statutory time limit laid down under Section 17A of the Wealth Tax Act, 1957 and question no.1 of WTR 43 of 1983 as well as question no.1 of WTR 58 of 1983 are answered in the affirmative against the Revenue and in favour of the assessee.

13. As regards the above question no.5 of WTR 58 of 1983, in view of the settled position that the assessment includes determination of the sum payable and the statutory provisions required the assessment to be made within the time prescribed, it cannot be said that there was only a mistake committed by the assessing officer in not signing the computation sheets which could be corrected under Section 42 C of the said Act. This is not a case of a mere mistake, defect or omission which can be rectified. This is a case where assessment is not made within time. The very purpose of the statutory

limitation described for making assessments would be frustrated if by applying the provisions of Section 42(C) the assessment which was barred by limitation was to be considered as valid. Therefore, the said question no.5 is answered in the affirmative against the Revenue and in favour of the assessee.

14. Now we come to question no.2 in WTR 43 of 1983 and question no.4 of the other matter which have a bearing on the question of application of rule 1BB of the said Act. The Tribunal has held that Rule 1BB applied to pending assessments. The Hon'ble Supreme Court in a decision of C.W.T. V. Shravan Kumar Swarup & Sons reported in 210 ITR Page 886. has in context of the said provisions of Rule 1BB held that the said rule partakes of the character of a rule of evidence. The rule is procedural and not substantive and is applicable to all proceedings pending on April 1, 1979 when the rule came into force. The Hon'ble Supreme Court confirmed the view taken by this court in C.W.T. V/s. Kasturbai reported in 167 ITR 107. In this view of the matter question no.2 of WTR 43 of 1983 and question no.4 of WTR 58 of 1983 are both answered in the affirmative against the Revenue and in favour of the assessee.

15. Both these references stand disposed of accordingly with no order as to costs.

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